

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:12-CR-170-H
NO. 5:13-CV-342-H

DECARLOS ANTONIO WRIGHT,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

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ORDER

This matter is before the court on petitioner's motion to vacate pursuant to 28 U.S.C. § 2255 filed May 10, 2013. The government responded by filing a motion for an evidentiary hearing. This matter was referred to United States Magistrate Judge Robert B. Jones, Jr. for the purpose of conducting an evidentiary hearing and to file a Memorandum and Recommendation ("M&R"). On July 29, 2013, the government filed a motion for new judgment seeking the district court to enter a new judgment from which petitioner may file an appeal and dismissing without prejudice petitioner's motion to vacate. In the motion, the government indicated that it was not conceding that counsel failed to file an appeal after petitioner's request to do so. Petitioner did not respond to the motion. On October 8, 2013, this court denied the government's motion for new judgment and

re-referred this matter to Judge Jones. On November 14, 2013, Judge Jones held an evidentiary hearing in this matter. On December 12, 2013, Judge Jones filed an M&R recommending that the government's motion to dismiss be granted. Petitioner filed objections on December 16, 2013, specifically objecting to the recommendation contained in the conclusion of the M&R, but giving no factual or legal reasons for this objection. Under Rule 72(b) of the Federal Rules of Civil Procedure, a district judge "must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3).

A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved.

Accordingly, the court adopts the recommendation of the magistrate judge as its own; and for the reasons stated therein, the government's motion to dismiss is GRANTED and petitioner's motion to vacate is DISMISSED. The clerk is directed to close the case.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A petitioner satisfies this standard by demonstrating that reasonable jurists would find

that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). A reasonable jurist would not find this court's dismissal of petitioner's \$ 2255 motion debatable. Therefore, a certificate of appealability is DENIED.

This 4th day of April 2014.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
#26